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04 UNITED STATES DISTRICT COURT  
05 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

06 MICHAEL JERRI JAMES, ) CASE NO.: C08-1036-RSM  
07 )  
07 Petitioner, )  
08 )  
08 v. ) REPORT AND RECOMMENDATION  
09 )  
09 ROBERT J. PALMQUIST, )  
10 )  
10 Respondent. )  
11 \_\_\_\_\_ )

12 INTRODUCTION

13 Petitioner Michael James was sentenced on May 30, 2008 to five months in prison for  
14 violating conditions of his supervised release. He has filed a petition for a writ of habeas corpus  
15 pursuant to 28 U.S.C. § 2241, challenging a decision by the Bureau of Prisons (“BOP”) to not  
16 release him to a halfway house for any portion of the five-month sentence. Respondent has filed  
17 an answer to the petition and petitioner has filed a response to the answer. After reviewing the  
18 submissions of the parties, the Court concludes, for the reasons set forth below, that petitioner’s  
19 habeas petition should be denied.

20 BACKGROUND

21 Petitioner pleaded guilty in 1992 in the District of Montana to second degree murder and  
22 related charges. (Dkt. No. 13 at 2). He was sentenced to 204 months in prison, followed by five

01 years of supervised release. (*Id.*) Petitioner was permitted by BOP to serve the final six months  
02 of his prison term at a “Community Corrections Center,” or halfway house, in Seattle,  
03 Washington. Petitioner finished his prison term at the halfway house and began his term of  
04 supervised release on February 13, 2008. (*Id.*)

05 On April 11, 2008, petitioner was arrested in Thurston County for driving under the  
06 influence. (*Id.*) Petitioner later acknowledged to his probation officer that he had been drinking  
07 prior to his arrest. (*Id.* at 3). He also acknowledged having used cocaine and marijuana, in  
08 violation of the terms of his supervised release. (*Id.*) Pursuant to a petition filed by his probation  
09 officer, petitioner was detained on May 2, 2008. (Dkt. No. 5 in Case No. CR08-5264-FDB).

10 After a hearing at which petitioner admitted having committed these violations, the  
11 Honorable Franklin Burgess sentenced petitioner to five months in prison, followed by five years  
12 of supervised release. (Dkt. No. 14 in Case No. CR08-5264-FDB). Judge Burgess also imposed  
13 as a condition of supervised release that petitioner serve up to 180 days in a residential reentry  
14 program. (*Id.*)

15 On July 7, 2008, the Court received the instant petition for a writ of habeas corpus.<sup>1</sup> (Dkt.  
16 No. 1). Because petitioner had not paid the filing fee nor moved for leave to proceed *in forma*  
17 *pauperis*, the Clerk sent petitioner a letter informing him of this deficiency. (Dkt. No. 3). On July  
18 17, 2008, petitioner paid the filing fee and his petition was filed. On July 21, 2008, the Court  
19 directed that the petition be served on respondent. (Dkt. No. 8).

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21 <sup>1</sup> The petition was styled by petitioner as a “Temporary Restraining Order . . . and 28  
22 U.S.C. § 2241 Habeas Corpus.” (Dkt. No. 1). However, because the petition challenged solely  
BOP’s execution of petitioner’s sentence, the Court construed it simply as a habeas petition under  
28 U.S.C. § 2241. (Dkt. No. 8).

01 Respondent filed an answer to the petition on August 13, 2008. (Dkt. No. 13). Petitioner  
02 filed a response to the answer on August 19, 2008. (Dkt. No. 14). The matter is now ready for  
03 review.

#### 04 DISCUSSION

05 Petitioner claims in his petition that BOP's denial of his request to serve part of his five-  
06 month sentence in a halfway house was contrary to BOP's statutory duty under 18 U.S.C. § 3624  
07 to place inmates, to the extent practicable, in a Community Corrections Center for the final portion  
08 of their sentence. (Dkt. No. 6 at 2). Petitioner also alleges that BOP's refusal to place him in a  
09 halfway house was an act of impermissible discrimination based upon petitioner's status as a  
10 Native American. (*Id.* at 2-3).

11 Respondent argues that the Court need not address the merits of petitioner's petition  
12 because petitioner has not exhausted his administrative remedies. (Dkt. No. 13 at 4-5).  
13 Respondent further argues that even if the Court were to address the merits of petitioner's claims,  
14 the claims should be denied because BOP was not required to place petitioner in a halfway house.  
15 Rather, BOP had discretion whether or not to so place him and declined to do so because the City  
16 of Olympia had lodged a detainer against petitioner for the charge of driving while intoxicated.  
17 (*Id.* at 6-9). As discussed below, the Court finds that petitioner failed to exhaust his administrative  
18 remedies but this failure should be excused and the petition denied because it lacks merit.

19 Exhaustion is a judicially-created prerequisite to filing for habeas relief in § 2241 cases.  
20 *See Brown v. Rison*, 895 F.2d 533, 535 (9th Cir. 1990), *overruled on other grounds by Reno v.*  
21 *Koray*, 515 U.S. 50, 54-55 (1995). BOP has created, by regulation, a four-tiered procedure for  
22 resolving prisoner complaints. *See* 28 C.F.R. § 542.10 *et seq.* The procedure begins with the

01 prisoner filing an informal grievance at his prison, and if the matter is not resolved, it moves up  
02 the bureaucratic ladder until it culminates with review of the complaint by the BOP's General  
03 Counsel in Washington, D.C. *See* 28 C.F.R. § 542.15.

04 It is undisputed that here, petitioner's complaint has not completed all four levels of  
05 review. (Dkt. No. 13, Declaration of Jill Sjodin at 3). However, it is within the Court's discretion  
06 to excuse the faulty exhaustion and reach the merits. *See* 895 F.2d at 535. Here, two factors  
07 weigh in favor of excusing petitioner's failure to exhaust: First, the circumstances presented here  
08 seem to fall into the category of cases that are "capable of repetition yet evading review." *Spencer*  
09 *v. Kemna*, 523 U.S. 1, 17 (1998). Second, petitioner's claims appear to lack merit and, rather than  
10 delay their consideration, in the interest of judicial efficiency, the Court addresses them now.

11 Contrary to petitioner's assertion, the statute upon which the petitioner relies, 18 U.S.C.  
12 § 3624, does not require BOP to place prisoners in Community Corrections Centers. Rather, the  
13 statute merely mandates BOP to ensure, *to the extent practicable*, that a prisoner serve a portion  
14 of his sentence in such a facility. *See* 18 U.S.C. § 3624(c)(1). Thus, the decision whether to place  
15 petitioner in a halfway house is discretionary and the only requirement is that, in making the  
16 decision, BOP consider certain factors specified by Congress. *See Rodriguez v. Smith*, 541 F.3d  
17 1180 (9th Cir. 2008). Regarding his claim that he was denied placement in a halfway house due  
18 to his status as a Native American, petitioner simply does not offer any evidence that BOP acted  
19 on this basis.

20 In addition, since the filing of petitioner's response, his claims now appear to have become  
21 moot. A review of the proceedings in petitioner's underlying criminal case, Case No. CR08-5264-  
22 FDB, reveals that petitioner was released from prison at the end of September and placed in a

01 halfway house – the very relief that he sought here. (Dkt. No. 31 in Case No. CR08-5264-FDB).  
02 Unfortunately, shortly after this placement, petitioner was again arrested for violating the terms  
03 of his supervised release and was ordered detained by the undersigned United States Magistrate  
04 on October 10, 2008. (Dkt. No. 32 in Case No. CR08-5264-FDB). On October 28, 2008,  
05 petitioner pleaded guilty to one violation of supervised release and Judge Burgess released him,  
06 pending a sentencing hearing scheduled for February 27, 2009. (Dkt. No.38 in Case No. CR08-  
07 5264-FDB). Therefore, because the petition lacks merit and also now appears to be moot,  
08 petitioner’s failure to exhaust his administrative remedies may be excused and his habeas petition  
09 denied.

10 CONCLUSION

11 For the foregoing reasons, petitioner’s petition under 28 U.S.C. § 2241 should be denied.  
12 A proposed Order is attached.

13 DATED this 30th day of October, 2008.

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15 Mary Alice Theiler  
16 United States Magistrate Judge  
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